

analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of

Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 36, GENERAL SUPERFUND SECTION

| State | Site name | City/county |
|----------|--|-----------------------------------|
| CA | Casmalia Resources | Casmalia. |
| IL | Matthiessen and Hegeler Zinc Company | LaSalle. |
| MS | American Creosote Works, Inc | Louisville. |
| NY | MacKenzie Chemical Works, Inc | Central Islip. |
| PA | Valmont TCE | Hazle Township and West Hazleton. |
| PA | Watson Johnson Landfill | Richland Township. |
| TX | Patrick Bayou | Deer Park. |
| TX | R & H Oil Company | San Antonio. |
| UT | Eureka Mills | Eureka. |
| VT | Ely Copper Mine | Vershire. |

Number of Sites Proposed to General Superfund Section: 10.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 1, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.
[FR Doc. 01–14617 Filed 6–13–01; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 64

RIN 3067–AD18

Changes to General Provisions and Communities Eligible for the Sale of Insurance That Include Future Conditions Flood Hazard Information on Flood Maps

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This Proposed Rule will revise the National Flood Insurance Program (NFIP) regulations to include definitions for future conditions hydrology and for the floodplains that may be shown on Flood Insurance Rate Maps (FIRMs), for informational purposes at the request of the community, to reflect future conditions hydrology; and establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs.

DATES: We invite comments on this Proposed Rule. Please submit written comments on or before August 13, 2001.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal

Emergency Management Agency, 500 C Street SW., Washington, DC; facsimile (202) 646–4536.

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief, Hazards Study Branch, 500 C Street SW., Washington, DC 20472; by telephone at (202) 646–3461, by facsimile at (202) 646–4596 (not toll-free calls), or by e-mail at matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

It was the expressed intent of the U.S. Congress, in enacting the Flood Insurance Act of 1968, to “encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, and guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards * * *” 42 U.S.C. 4001(e). These proposed revisions to the NFIP regulations are a result of the continuing reappraisal of the NFIP for the purpose of encouraging sound floodplain management to reflect that intent.

Historically, flood hazard information presented on NFIP flood maps has been based on the existing conditions of the floodplain and watershed. When the

mapping of flood hazards was initiated under the NFIP, the intent was to reassess each community's flood hazards periodically and, if needed, revise the flood map for that community. Flood hazards may change significantly in areas experiencing urban growth. For example, in *Flood Insurance Study Guidelines and Specifications for Study Contractors* (FEMA 37, January 1995) specifies that flood hazard determinations should be based on conditions that are planned to exist in the community within 12 months following completion of the draft Flood Insurance Study (FIS). Examples of future conditions to be considered in the context of FEMA 37 are public works projects in progress, including such as channel modifications, hydraulic control structures, storm-drainage systems, and various other flood protection projects. These are projects that will be completed in the near future for which completion can be predicted with a reasonable degree of certainty and their completion can be confirmed prior to the new or revised flood map becoming effective. By contrast, future land-use development, such as urban growth, is uncertain and difficult to predict, and is not considered in the context of the FEMA guidelines.

Communities experiencing urban growth and other changes have expressed a desire to use future conditions hydrology in regulating watershed development. While some communities do regulate based on future development, others are hesitant to enforce more restrictive standards without Federal support. From a floodplain management standpoint, future conditions floodplains can be used, and are being used, by communities to enforce more stringent floodplain management policies than those required by FEMA. By displaying future conditions floodplains on the flood map, the community and FEMA are alerting the public that flood hazards may increase in the future due to urban development. Many communities throughout the United States develop future conditions hydrology and create their own maps to regulate floodplain development. This has resulted in two sets of maps being produced for a community: future conditions maps for local floodplain management and FIRMs for flood insurance determinations. As a result, these progressive communities have not had a sense of ownership for the FIRMs, and their resources have been directed toward maintaining their own future conditions maps.

Recent Evaluation and Conclusions

To assist officials in such progressive communities, FEMA undertook an evaluation to determine whether future conditions flood hazard information could and should be placed on flood maps and in the accompanying study reports. The results of that extensive evaluation are documented in a FEMA report entitled "Modernizing FEMA's Flood Hazard Mapping Program: Recommendations for Using Future Conditions Hydrology for the National Flood Insurance Program" (see www.fema.gov/mit/tsd/FT_hydro.htm). The specific conclusions reached in the report are as follows:

- The local community should determine the future conditions land-use and hydrology.
- If the community chooses to adopt a regulatory floodway based on future conditions hydrology, the use of this floodway should be supported by local ordinances.
- If the community requests that FEMA do so, the future conditions 100-year (base flood) floodplain should be shown on the printed FIRM and be designated as Zone X with no Base Flood Elevations (BFEs) shown.
- When possible, all three floodplains—existing conditions 100-year floodplain, existing conditions 500-year floodplain, and future conditions 100-year floodplain—should be shown on the FIRM. However, when the future conditions 100-year floodplain and existing conditions 500-year floodplain are so close together as to be confusing if both are shown on the printed FIRM, the future conditions 100-year floodplain should be shown in lieu of the existing conditions 500-year floodplain. When this occurs, appropriate reference should be made to the existing conditions 500-year floodplain information being shown in the FIS report. For a Digital Flood Insurance Rate Map (DFIRM), appropriate reference also should be made to the existing conditions 500-year floodplain information being included in an associated database.
- BFEs should be shown on the FIRM only for the existing conditions 100-year floodplain. The future conditions BFEs should be included in the FIS report (on the Flood Profiles and in the Floodway Data Table), thus providing necessary information to the community to meet their local floodplain management needs. The existing conditions 500-year flood elevations also should be shown on the Flood Profiles in the FIS report to meet the requirements of Executive Order No. 11988 and to provide Federal agencies with information to evaluate

the potential effects of any actions they may take in a floodplain.

- The community may choose to show the existing conditions 500-year floodplain on the FIRM and to include the future conditions 100-year elevations only on the Flood Profiles in the FIS report. Various other combinations to display the flood hazard data also are possible. FEMA and the community should work together to produce the most useful FIRM and FIS report for the community.

- From a floodplain management standpoint, FEMA should continue to require regulation of floodplain development based on the existing conditions data, while local floodplain managers can regulate development based on the future conditions data.

- From a flood insurance standpoint, FEMA must continue to require flood insurance for structures shown in the existing conditions 100-year floodplain, or Special Flood Hazard Area. Showing the future conditions floodplain as Zone X should avoid any confusion regarding the mandatory flood insurance requirement. It also will allow insurance policies to be purchased at a reduced rate, as insurance is currently available for structures in the existing conditions 500-year floodplain.

As recommended in the previously referenced FEMA report, FEMA intends to show future conditions flood hazard information on flood FIRMs and in collateral FIS reports. This information will be for informational purposes only. There will be no change will be made in the use of existing conditions data for establishing flood insurance rates. Through community participation in the Community Rating System, however, reduced flood insurance rates are available for those communities that enforce more stringent regulatory standards than required by the NFIP.

Synergy With Other FEMA Programs

The inclusion of future conditions data in FIRMs and related products for communities that request that such data be included is part of a larger FEMA plan to modernize the flood hazard mapping program and thereby reduce the burden on taxpayers for disaster relief and improving flood hazard mitigation. FEMA's plan is to facilitate ownership of the flood maps by State and local entities through greatly increased involvement in the flood mapping process through cooperative agreements. FEMA will provide flood mapping funds, technical assistance, and mentoring to partners—termed a "Cooperating Technical Community Partners"—and those partners will then develop and maintain

all of the flood maps or components thereof. The proposed cooperative agreements recognize that hazard identification and mapping must go hand-in-hand with the responsibility of managing floodplains locally. By creating a strong local program that maintains the connection between mapping and managing flood hazard areas, the NFIP also is strengthened in its ability to reduce the loss of property and life.

FEMA recognition of future conditions data will be a key factor in the State and local communities assuming increased ownership in the process. By mapping locally pertinent information, local ownership of the NFIP flood maps will increase. Because flood conditions and hazards vary locally and regionally, inclusion of those unique local conditions on the flood maps may be warranted. For example, a community may find it useful to identify areas on the FIRM with floodplains based on developed/future hydrologic conditions in addition to the standard features already depicted. In effect, FEMA will maintain national standards while at the same time providing a useful tool to the community. These changes also will directly complement FEMA's mitigation activities. Communities will now be able to better implement proactive mitigation measures based on awareness of future conditions in their community by the public and by the development community.

In sum, the use of future conditions hydrology is consistent with modernizing the mapping program; with promoting better proactive mitigation measures; and with FEMA's desire to be flexible with, and supportive of, those communities that would like to implement stricter land-use regulations.

Planned Implementation

The FEMA plans for implementing the presentation of future conditions flood hazard information on NFIP flood maps are summarized below.

Map Specifications. The new DFIRM product specifications being developed by FEMA will include options that can be invoked depending on the available data. This new DFIRM product will include certain basic features and meet certain minimum mapping requirements. Additional options will be included, depending on the community needs and available funding. A review of needs and available data will lead to a time and cost estimate and a recommendation on which options to exercise. Procedures for displaying future conditions floodplains on the new DFIRM will be

included in these new mapping specifications.

Cooperating Technical Partners Activities. As a part of the mapping activities undertaken by communities participating in the Cooperating Technical Partners initiative, an option could be for communities to show the 100-year future conditions floodplain on the FIRM in addition to the existing conditions floodplain. The communities would develop and map existing and future conditions and provide the new FIRM and supporting data to FEMA; in turn, the communities would receive a useful tool for risk assessment and flood hazard mitigation.

Revisions. Because mapping future conditions floodplains would be implemented on a community level, the flood maps will maintain consistency within community boundaries, regardless of how many map panels the community encompasses. When FEMA receives future conditions data from communities that wish to participate, the data could be incorporated easily at the time of the digital conversion to the DFIRM product. Alternatively, communities that require flood hazard updates can submit future conditions data to be incorporated with the existing conditions data updates for the DFIRM conversion. Displaying future conditions data will increase community involvement in the NFIP and help FEMA to build stronger partnerships with communities. If these communities are involved at the beginning of the digital conversion process, they will have a stronger sense of ownership of the flood maps, because they will have input on the kind of flood hazard information shown on the maps.

Once the future conditions floodplains have been included on a flood map, all FEMA- or community-initiated studies, restudies, and revisions will incorporate the future conditions hydrology that the community has determined. FEMA will perform a technical review of the locally developed data and will include the data in all map updates. Additionally, FEMA will continue to make determinations on whether structures and parcels of land are in or out of existing conditions floodplains shown on NFIP maps, and will issue Letters of Map Amendment and Letters of Map Revisions Based on Fill based on these determinations. This procedure can be expanded to determine whether these structures and parcels of land are in or out of the future conditions floodplain when those floodplains are shown on the NFIP maps.

National Environmental Policy Act

This Proposed Rule is categorically excluded from the requirements of 44 CFR part 10.8(d)(2)(ii), Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of proposed rulemaking, a regulatory flexibility analysis is required for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. As noted under Regulatory

Planning and Review, this proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs. We know of no substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

Executive Order 12778, Civil Justice Reform

This Proposed Rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this rule is required by statute, 42 U.S.C 4014(f) which also specifies the regulatory approach to be taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this Proposed Rule adheres to the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect

future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs. We know of no conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

List of Subjects in 44 CFR Parts 59 and 64

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and record keeping requirements.

Accordingly, 44 CFR parts 59 and 64 will be amended as follows:

PART 59—[AMENDED]

1. Section 59.1 is revised to include the following a definition for: *Area of future conditions flood hazard* means the land area that would be inundated by the 1-percent-annual-chance flood based on future conditions hydrology.

2. Section 59.1 is revised to include the following definition: *Future conditions flood hazard area, or future conditions floodplain*—see *Area of future conditions flood hazard*.

3. Section 59.1 is revised to include the following definition: *Future conditions hydrology* means the flood discharges associated with projected land-use conditions based on a community's zoning maps or comprehensive land-use plans.

PART 64—[AMENDED]

1. The initial text of Paragraph 64.3(a)(1) will be revised to read as follows:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. The FIRM indicates the risk premium rate zones applicable in the community and when those rates are effective. The FIRM also may indicate, at the request of the community, zones to identify areas of future conditions flood hazards. The symbols used to designate the risk premium rate zones and future conditions zones are as follows:

2. The entry for the zone symbol for Zones B, X that appears in Paragraph 64.3(a)(1) will be revised to read as follows:

B, X.....Areas of moderate flood hazards or *areas of future conditions flood hazard*

3. The closing text of Paragraph 64.3(a)(1) will be revised to read as follows:

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) or potential hazard (i.e., future conditions flooding) will be designated on the FIRM by use of the proper zone symbols in combination.

Dated: June 5, 2001.

Margaret E. Lawless,

Acting Executive Associate Director for Mitigation.

[FR Doc. 01-15055 Filed 6-13-01; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1337, MM Docket No. 01-116, RM-10069]

Digital Television Broadcast Service and Television Broadcast Service; Hibbing, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duluth-Superior Area Educational Television Corporation, an applicant for a construction permit for a new noncommercial educational television station to operate on NTSC channel *18-at Hibbing. Duluth-Superior requests the replacement of DTV channel *31 for NTSC channel *18-at Hibbing. DTV Channel *31 can be allotted to Hibbing, Minnesota, in compliance with Sections 73.622(a) and 73.623(c) of the Commission's criteria as set forth in the Public Notice, released November 22, 1999, DA 99-2605. DTV channel *31 can be allotted at reference coordinates (47-22-53 N. and 92-57-15 W.) with a power of 500, a height above average terrain HAAT of 211 meters and with a DTV service population of thousand. However, since the community of Hibbing is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before July 30, 2001, and reply comments on or before August 14, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW.,